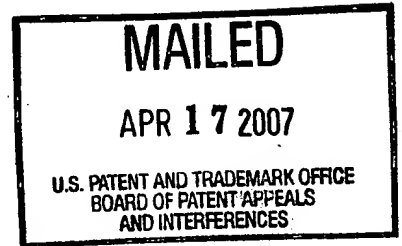


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Michael Lee Vatter,
Jorge Max Sunkel, and
Curtis Bobby Motley

Appeal No. 2004-1788
Application No. 09/902,321



DECISION ON PETITION

This is a decision on the Request to Vacate Decision on Appeal Due to Filing of RCE, filed February 9, 2006, (Request), requesting that the “decision [of the Board of Patent Appeals and Interferences, dated May 20, 2005] be vacated in view of an RCE filed on March 31, 2005.” The Request will be treated as a petition under 37 C.F.R. § 1.181. Since the Request concerns an action of the Board, it will be decided by the Chief Administrative Patent Judge pursuant to MPEP § 1002.02(f)(4)(b).

FINDINGS OF FACT

1. The present application was published on February 14, 2002, Publication No. 2002-0018760 A1.
2. This appeal was docketed at the Board on August 3, 2004.
3. Appellants filed a waiver of oral hearing on March 15, 2005. This was the last communication Appellants submitted to the Board in this application.

4. Appellants filed an RCE on March 31, 2005.
5. The Board issued a decision on the appeal on May 20, 2005.
6. Appellants filed the Request on February 9, 2006.

DISCUSSION

MPEP § 1215.01 states:

To avoid the rendering of decisions by the Board in applications which have already been refiled as continuations, applicants should promptly inform the Chief Clerk of the Board in writing as soon as they have positively decided to refile or to abandon an application containing an appeal awaiting a decision. *Applicants also should advise the Board when an RCE is filed in an application containing an appeal awaiting decision.* Failure to exercise appropriate diligence in this matter may result in the Board refusing an otherwise proper request to vacate its decision.

(emphasis added).

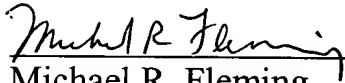
Appellants have never advised the Board of the March 31, 2005 filing of the RCE.

Procedurally, “the filing of an RCE will be treated as a withdrawal of the appeal.” *Id.* Thus, the appeal in the present application was withdrawn on March 31, 2005. Since the appeal was effectively withdrawn before the Board rendered its decision on May 20, 2005, as a matter of law that decision is of no force or effect.

However, since the present application was published on February 14, 2002, the Board’s decision has been publicly available since it was rendered on May 20, 2005. Thus, even if the decision were to be vacated, any such action would not alter the effect or availability of the decision.

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Accordingly, the Request is **DENIED** as moot, and the application is returned to the Examiner for consideration of the RCE.



Michael R. Fleming
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

Appeal No. 2004-1788
Application 09/902,321

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